

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY****REGION 8****999 18TH STREET - SUITE 300****DENVER, CO 80202-2466****Phone 800-227-8917****<http://www.epa.gov/region08>**

November 20, 2006

Ref: ENF-L

Robert A. Emmett, Esq.
Senior Environmental Counsel
W.R. Grace & Co.
7500 Grace Drive
Columbia, Maryland 21044

Dear Mr. Emmett:

Thank you for sending W.R. Grace's comments on the draft Administrative Order on Consent (AOC) which EPA provided to you on August 9, 2006. I received the comments on November 7, 2006. The purpose of this letter is to transmit to you the EPA-DOJ legal team's general response to the issues you have raised. Each issue is responded to below in the order in which it is presented in the AOC.

Paragraph 1 - We will delete "future response".

Paragraph 6 - We will delete "insolvency or other".

Paragraph 8 - We will add language concerning Bankruptcy Court approval/

Paragraph 9 - We will not make the requested change, however, we may agree to just say "future response costs".

Paragraph 11.c. - EPA will not agree to give covenants to entities who are not bound. Throughout our dealings with Grace we have never gone beyond three entities, Grace, Grace-Conn and KDC. We believe these are the only parties who should be bound and who should receive covenants. Therefore, the definition of "debtor" is not necessary.

Paragraph 11.f. - "Future response costs" is a defined term. We can work with you to make sure the definition adequately conveys OU3 property issues, but do not need to change the term throughout the text of the AOC. This response applies to all similar changes made later in the AOC. We will add "general unsecured" to the claim language.

Section V - We will add your introductory clause about EPA findings.



Paragraph 29 - Will stay as it is. If Grace disagrees that it has responsibility for administrative expenses we need to discuss this upfront.

Paragraph 33 - Will stay as it is. We might be willing to add that "EPA has determined"...

Section VI - EPA will add introductory language.

Paragraph 45.a. and 45.c. - EPA will not change the language. The suggested language is too fraught with ambiguity.

Paragraph 45.f. - EPA will not change the language. CERCLA provides authority to order responsible parties to perform work. This is true even in bankruptcy where the party owns the property.

Paragraph 60.a. - There are still three Respondents, so we will leave "their". The State wishes to be included, so we will leave the State in the text. We will make the changes you requested concerning interviews with Grace employees.

Paragraph 60.c and 60.d. - Will stay as it is. Please remember we are giving you unvalidated data.

Paragraph 61 - We will leave in this Paragraph but will consider adding a "for purposes of this Order only".

Paragraph 66 - Will stay as it is.

Paragraph 70 - The suggested language may be OK, but we must check with management.

Paragraph 84 - Will stay as it is.

Paragraph 86 - Will stay as it is.

Paragraph 90 - Will stay as it is.

New Paragraph 97 - This language would mean that Grace could challenge this AOC in an enforcement proceeding. We will not add it.

Paragraph 98 - Will stay as it is. EPA's work is necessitated by Grace's actions in the past, Grace must take ultimate responsibility.

Paragraph 105 - EPA will make the changes subject to management approval.

I will be back in the office on December 4th. Please give me a call to talk about logistics for moving forward on our settlement.

Sincerely,

Matthew Cohn
Legal Enforcement Program